



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

Public

February 27, 2006

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Agmasie Birhan Woldie, M.D.
1000 Riverwalk Boulevard – Apt. 1209
Shreveport, Louisiana 71105

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Quarles & Associates, P.C.
36 West 44th Street, Suite 816
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Ann Hroncich Gayle, Esq.
Associate Counsel
NYS Department of Health
Division of Legal Affairs
90 Church Street – 4th Floor
New York, New York 10007-2919

RE: In the Matter of Agmasie Birhan Woldie, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 06-34) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the Respondent or the Department may seek a review of a committee determination.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

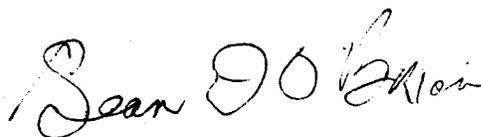
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,

A handwritten signature in cursive script that reads "Sean D. O'Brien".

Sean D. O'Brien, Director
Bureau of Adjudication

SDO:djh

Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

COPY

-----X
IN THE MATTER : DETERMINATION
OF :
AGMASIE BIRHAN WOLDIE, M.D. : ORDER
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BPMC NO. 06-34

A Notice of Hearing and Statement of Charges, both dated October 18, 2005, were served upon the Respondent, Agmasie Birhan Woldie, M.D. RUTH HOROWITZ, Ph.D. (CHAIR), NISHA K. SETHI, M.D., AND PRAKASH C. SAHARIA, M.D., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10) (Executive) of the Public Health Law. LARRY G. STORCH, ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer. The Department of Health appeared by Ann Hroncich Gayle, Esq., Associate Counsel. The Respondent appeared by Quarles & Associates, P.C., Denise L. Quarles, Esq., of Counsel. Evidence was received and witnesses sworn and heard and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

PROCEDURAL HISTORY

Date of Service:	October 27, 2005
Answer Filed:	November 9, 2005
Pre-Hearing Conference:	November 10, 2005
Hearing Dates:	November 17, 2005 December 5, 2005
Witnesses for Petitioner:	Patient A Irene Perosi, R.N. Monica Lopez
Witnesses for Respondent:	Agmasie Birhan Woldie, M.D.
Deliberations Held:	January 18, 2006

STATEMENT OF CASE

Petitioner has charged Respondent with two specifications of professional misconduct. The charges relate to Respondent's medical care and treatment of one patient. The charges include allegations of willfully harassing, abusing or intimidating a patient, in violation of N.Y. Education Law §6530(31), and engaging in conduct in the practice of medicine that evidences moral unfitness to practice, in violation of N.Y. Education Law §6530(20). Respondent denied the allegations.

A copy of the Statement of Charges is attached to this Determination and Order in Appendix I.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses refer to transcript page numbers or exhibits. These citations represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

1. Agmasie Birhan Woldie, M.D. (hereinafter "Respondent"), practiced medicine in New York State in a medical residency program at Saint Vincent Catholic Medical Center in Staten Island, New York, from approximately July, 2000 through August, 2003. Respondent does not (nor did he ever) hold a license to practice medicine in New York State. (T. 224-225; Ex. #2).

2. For the duration of his residency, Respondent was a "licensee" as defined in the Public Health Law. (Public Health Law §230(7)).

3. Patient A, then a nineteen year old female, was admitted to Saint Vincent Catholic Medical Center ("the Hospital") in Staten Island, New York, through the emergency room on May 1, 2002. Patient A complained of severe, sharp pain in the lower right quadrant of her abdomen. (Ex. #4).

4. Patient A was treated for pyelonephritis at the hospital until May 5, 2002. (Ex. #4).

5. Respondent, then a resident physician, treated Patient A during the course of her hospitalization. (Ex. #4; T. 57, 227).

6. Respondent visited Patient A's room on several days during her hospitalization, but did not document each visit in the medical record. (T. 21-23, 122, 270-272, 308).

7. During the visits, Respondent would check Patient A for signs of fever by placing his hands on her forehead and cheeks. (T. 22).

8. Respondent visited Patient A on at least two occasions on May 5, 2002. During the last visit, late in the day, Respondent wrote his home and cellular telephone numbers on a pad of paper. He then leaned over and kissed Patient A on the lips. (Ex. #3; T. 31-32, 75-77).

9. After Respondent left the room, Patient A became upset. She pressed the nurse call button. She also called her mother. She also called her friend, Monica Lopez, and told them both what had happened. (T. 32-33, 103).

10. Irene Perosi, R.N. responded to Patient A's room. After the patient reported the incident to her, Ms. Perosi

summoned the head nurse, who also notified the chief resident.
(Ex. #5; T. 33-37, 131, 135-138, 158-162, 255-257).

11. Patient A told the nurses that she wanted to leave the hospital. The nurses told her that her options were to stay or leave against medical advice after completing an intravenous antibiotic treatment. Patient A said that she wanted to leave. (T. 33).

12. When the chief resident arrived in the room, Patient A reported the incident to him. (T. 35-37).

13. After the intravenous treatment was finished, Patient A received a prescription for antibiotics and left the hospital. (T. 41-42).

14. The chief resident told Respondent to leave the hospital that evening. He left, but returned the next day for a meeting with the chief resident and the program director. (T. 255-258).

15. Respondent returned to work a few days later, but then took a leave of absence beginning on May 16, 2002. (T. 258-259, 340-341).

16. Respondent was referred to the Committee for Physician's Health for evaluation. The evaluation was performed by Neuroscience Associates of New York sometime during June, 2002. (T. 296-300, 303-307).

17. Respondent was allowed to return to the hospital on July 1, 2002 to complete his residency. Respondent completed his residency in August, 2003. (T. 259, 370).

CONCLUSIONS OF LAW

Respondent is charged with one specification alleging conduct evidencing moral unfitness to practice the profession, in violation of Education Law §6530(20), and one specification alleging the willful harassing, abusing, or intimidating of a patient either physically or verbally, in violation of Education Law §6530(31). Neither of these violations is defined further by statute.

Conduct in the practice of medicine which evidences moral unfitness to practice medicine has been defined as conduct which violates the moral standards of the professional community or alternatively, conduct which violates the trust conferred upon a physician by virtue of his licensure. See, Matter of Rojas v. Sobol, 167 AD2d 707, leave denied 77 NY2d 806; Matter of Abdelmessih v. Board of Regents, 205 AD2d 983, 613 NYS2d 971.

The other charged specification of misconduct involve the alleged willful harassing, abusing or intimidating of a patient, either physically or verbally. The Hearing Committee

interpreted these words in light of their usual and commonly understood meaning. (See, New York Statutes, §232).

Using the above-referenced definitions as a framework for its deliberations, the Hearing Committee made the following conclusions of law pursuant to the factual findings listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The Hearing Committee first considered the credibility of the various witnesses, and thus the weight to be accorded their testimony.

The Department presented three witnesses: Patient A, Irene Perosi, R.N., and Monica Lopez. Patient A was a nineteen year old college freshman at the time of the incident involving Respondent. Her testimony at the hearing, three years later, was direct and forthright. No credible motive for her to testify falsely was put forward by Respondent. The Committee found her to be a credible witness.

Monica Lopez is a friend of Patient A's. She testified regarding the fact that Patient A promptly reported the incident involving Respondent. The Committee found her to be a credible witness. Irene Perosi was a nurse who responded to Patient A's emergency call after the incident in question. She did not demonstrate a firm recollection of the events, and

could not explain the lack of entries in the medical record written by her. The Hearing Committee found her to be a less than credible witness. However, her testimony was primarily intended to demonstrate that Patient A promptly reported the incident. This fact is not in dispute.

Respondent called no witnesses but testified on his own behalf. Respondent has an obvious stake in the outcome of this case. He did not appear in person, but was allowed to testify via speakerphone. As a result, the Hearing Committee was unable to see him during his testimony, or to assess his demeanor. Additionally, Respondent was unable to give a reasoned explanation for his referral to the Committee for Physician's Health. The Hearing Committee found Respondent to be a less than credible witness.

The Hearing Committee unanimously found that Respondent did touch Patient A on the face and neck on more than one occasion in order to check for fever. The Committee further found that Respondent wrote out and gave Patient A his home and cellular telephone numbers. These facts were not disputed by Respondent. The Committee notes that although it may have made Patient A uncomfortable, it is not uncommon to check a patient for fever by touching a patient's face cheek or neck, as well as by using a thermometer. The Committee also concluded that while

it may have been inappropriate to give Patient A his telephone numbers, this did not rise to the level of professional misconduct.

A majority of the Hearing Committee further concluded that Respondent did kiss Patient A sometime during the last day of her hospitalization (May 5, 2002). This action clearly violated the moral standards of the medical profession. Moreover, Respondent's action constituted willful physical abuse of Patient A. By a vote of 2 - 1, the Hearing Committee concluded that Respondent's action in this regard constituted professional misconduct in violation of Education Law §6530(20) as well as in violation of Education Law §6530(31). The dissenting member of the Hearing Committee did not find sufficient documentation in the hospital medical record to corroborate Patient A's testimony.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, determined by a vote of 2-1 that Respondent should receive a censure and reprimand. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties. Several of the possible penalties set forth, such as revocation or suspension, are not applicable since the Respondent does not actually hold a New York medical license.

The Department sought to have a permanent limitation on the registration or issuance of any further license. The Hearing Committee determined that this was too severe a sanction for the misconduct found. The majority of the Hearing Committee took into consideration that Respondent did go for a screening evaluation through the Committee for Physician's Health, and that the hospital ultimately allowed Respondent to complete his residency. The Committee believes that the likelihood of a repeat violation by Respondent is low. Under the totality of the circumstances, the Committee determined that a censure and reprimand is the most appropriate sanction.

ORDER

Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

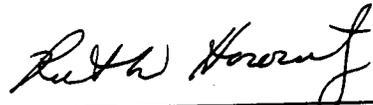
1. The First and Second Specifications of professional misconduct, as set forth in the Statement of Charges,

(Petitioner's Exhibit #1) are SUSTAINED;

2. Respondent shall and hereby does receive a CENSURE AND REPRIMAND in full satisfaction of the charges;

3. This Determination and Order shall be effective upon service. Service shall be either by certified mail upon Respondent at Respondent's last known address and such service shall be effective upon receipt or seven days after mailing by certified mail, whichever is earlier, or by personal service and such service shall be effective upon receipt.

DATED: Troy, New York
February 23, 2006


RUTH HOROWITZ, Ph.D. (CHAIR)

NISHA K. SETHI, M.D.
PRAKASH C. SAHARIA, M.D.

TO: Ann Hroncich Gayle, Esq.
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New York, New York 10036

APPENDIX I

APPENDIX I

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
AGMASIE BIRHAN WOLDIE, M.D.

STATEMENT
OF
CHARGES

AGMASIE BIRHAN WOLDIE, M.D., the Respondent, was a "licensee", as that term is defined in N.Y. Public Health Law 230(7), at times on and after July 1, 2000, and does not hold a license to practice medicine in New York State issued by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. From approximately May 2-5, 2002, during Patient A's hospitalization at Saint Vincent Catholic Medical Center in Staten Island, New York, Respondent made inappropriate comments to Patient A (d.o.b. 11/12/82), and acted inappropriately toward her through conduct including but not limited to touching her face, neck and upper chest, kissing her, asking her for a date, and giving her his home and cellular telephone numbers.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

WILLFULLY HARASSING, ABUSING OR INTIMIDATING A PATIENT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(31) by willfully harassing, abusing, or intimidating a patient either physically or verbally, as alleged in the facts of:

1. Paragraph A.

SECOND SPECIFICATION

MORAL UNFITNESS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(20) by engaging in conduct in the practice of the profession of medicine that evidences moral unfitness to practice as alleged in the facts of the following:

2. Paragraph A.

DATED: October 18, 2005
New York, New York



Roy Nemerson
Deputy Counsel
Bureau of Professional
Medical Conduct